

THINGS TO DO TO AVOID THE DISCIPLINARY COMMITTEE

1. Do not commit any misrepresentations and communicate clearly:

Misrepresentation is the most common type of complaint the Commission receives from the public. Make sure your client understands how the negotiation process works, how the inspection process works, and any other important aspects of the transaction. Whether you are an agent or a transaction broker, you must explain to a buyer client or customer at the time an offer is made, and a seller client or customer at the time the offer is presented, what they should expect for closing costs. Always endeavor to promptly communicate with your client or customer. Lack of communication often results in the client or customer filing a complaint against the licensee.

2. Document your file:

Keep notes and records of things that occurred in a transaction as they occurred and use phone logs, confirming letters and emails to document communications of the entire transaction from showing to close. Remember to put the agreement of the parties in writing by adding addenda to the contract if issues arise after the initial contract offer is accepted.

3. Perform your statutory duties:

Whether you are a seller's agent, buyer's agent or transaction broker, make sure that you perform the minimum duties required by statute pursuant to K.S.A. 58-30,106, K.S.A. 58-30,107, or K.S.A. 58-30,113. Know the requirements and prohibitions that apply to agency agreements and transaction brokerage agreements and always be aware of what is prohibited and required by the prohibited acts section in K.S.A. 58-3062. The client's or the customer's interests supersede the licensee's goal to receive a commission.

4. Don't act as an expert.

Don't be afraid to say "I don't know" if a matter is beyond the licensee's area of expertise and refer the client or customer to an expert who can advise the client or customer on that issue. A licensee does not have to be an expert on foundations, roofs, mold, termites, water damage, etc. in order to perform the licensee's statutory duties to

the client or customer pursuant to K.S.A. 58-30,106, K.S.A. 58-30,107 or K.S.A. 58-30,113. The licensee *is* performing his or her statutory duties by advising the client or customer to seek an expert opinion on a matter that is beyond the licensee's area of expertise.

5. Observe, document and disclose adverse material defects actually known to the licensee.

A licensee is expected to exercise the skill and care of a reasonably prudent person who is licensed as a salesperson or broker. Disclose any adverse material defects which the licensee has knowledge of in a timely manner and document that the disclosure was made.

6. Use extreme care recommending inspectors.

Make sure that any list of inspectors provided includes only reputable and qualified specialists. Explain to the client or customer that an inspection is not a warranty. Make sure clients are fully informed of the consequences of waiving an initial inspection or waiving a recommended follow-up inspection that is recommended in the initial "whole house" inspection.

7. Handle multiple contracts carefully.

Exercise the utmost care with multiple offers, backup offers, and contingencies. If an offer has not been accepted, ensure that all potential parties are aware that multiple offers exist and ensure that all potential parties understand the process for submission if additional offers will be considered. Avoid the appearance of impropriety by self-dealing on a property on behalf of the licensee, on behalf of a relative of the licensee or an offer submitted by someone from the same brokerage firm.

8. Beware of FSBO's.

As a buyer's agent or transaction broker assisting the buyer, a licensee can be put in a difficult position if a FSBO is involved. Perform your statutory duties. The FSBO is not your client. Consult with the supervising broker or legal counsel if a problem arises.

9. Do not give legal advice.

A licensee must recommend to the client or customer that legal counsel be retained to answer any legal questions the client or customer may have. The licensee is not trained as an attorney and should not be answering legal questions. See No. 10 below.

10. Either use standard forms/procedures or have an attorney that regularly practices real estate law draft the forms.

Any ambiguity in the wording of the contract will be construed against the drafter of the contractual agreement. Use the rule of thumb: "If I looked at this in two years, would everyone involved in the transaction clearly know what this clause means and will a judge or jury know what it means?"

11. Promptly review title reports.

Carefully review title reports as soon as possible after the reports are received and disclose any defects or requirements that may impact the title or the closing at the earliest opportunity. Licensees have a duty to disclose all known adverse material defects pursuant to K.S.A. 58-30,106, K.S.A. 58-30,107 or K.S.A. 58-30,113.

12. Provide the brokerage relationships brochure at the earliest opportunity and carefully explain the options to the client or customer in an understandable manner.

Remember that the choice of what type of brokerage relationship is entered into lies with the member of the public. If a brokerage firm only practices transaction brokerage, and the member of the public wants agency services, the brokerage can't provide what that person needs. Send them somewhere else. Recognize a potential dual agency

problem immediately, discuss it with the clients and determine next steps based upon those discussions. Don't create a dual agency situation by unnecessarily signing an unrepresented buyer up to a buyer's agency agreement instead of remaining a seller's agent. A transaction broker addendum is a viable option in many situations when agency exists on both sides of the transaction. Occasionally, there is no viable solution and one client may need to be referred to another brokerage to ensure that both clients get the agency level of services they want. Think of it as a pyramid with the brokerage relationship flowing down from the supervising broker unless a designated agent is involved.

13. Respond promptly and completely to a Commission request for information or documentation:

If you need more time to gather documents, contact the investigator and explain the reason you need more time and provide a projected time when the information and documents can be supplied. The Commission staff will ask for this type of request to be submitted in writing. It is a violation of K.S.A. 58-3062(a)(20) to fail to timely respond to a request from the Commission for information or documentation.

14. Do not be untruthful or mislead the Commission in responding to any Commission request for information or documentation.

Any attempt to mislead, change or omit documentation or information will likely result in imposition of a substantial fine and/or suspension or revocation. Provide a complete, detailed and truthful response to the Commission staff's inquiry. If there is something that staff is not asking that you feel is important, provide the additional explanation or documentation that you believe the disciplinary committee should know in order to properly evaluate your case.

15. Stick to your area of expertise.

A licensee should stick to the licensee's area of expertise, (ie. residential, commercial or agricultural property transactions require a different skill set and knowledge base.) A licensee should not work outside of the area they normally practice. For example, if a licensee hasn't handled a commercial property before, it might be better to work out a referral arrangement with a licensee that handles commercial properties rather than taking a listing on a commercial property or helping a friend with a commercial

purchase. The same rule of not working outside of your area of expertise holds true for specialty properties (ie. a property that can be used for only a limited purpose without major renovations or the area of practice requires expertise in a particular subject area that a licensee would not normally possess.)

16. Supervising broker's name must be prominently and conspicuously displayed in all advertising.

Licensees must include the supervising broker's business name or trade name in all advertising, and the supervising broker's business name or trade name must be prominently and conspicuously displayed in comparison to the licensee's name or team name. K.A.R. 86-3-30 establishes factors the Commission considers to determine if the supervising broker's business name or trade name is displayed prominently and conspicuously. The licensee must also include any other information in the advertising that the supervising broker may require.

17. Make sure advertising of any special offers do not violate any laws prohibiting rebates, undisclosed commission, improper referral fee, or payment to an unlicensed person for performing a licensed activity.

The Commission has published a gifts and gratuities guideline to assist licensees who want to offer a gift to their client or customer. The guideline gives examples of gifts that would be permitted and gifts that would not be permitted under K.S.A. 58-3062. The gifts and gratuities guideline is available under "Guidelines" on the KREC website.

18. Licensees should be familiar with their reporting requirements.

Licensees are currently required to provide the Commission a written report within 10 days of the occurrence of:

- (1) any litigation filed by or against the licensee or real estate company owned in whole in part by the licensee involving the business of buying, selling, leasing or exchanging real estate or any activity that falls within the definition of "broker";
- (2) the disposition of the above-mentioned litigation;
- (3) any judgment against the licensee or a real estate company owned in whole or in part by the licensee; and

(4) any charge of, arrest or indictment for, plea of guilty or nolo contendere to, or conviction of any of the following: any misdemeanor that reflects upon the licensee's honesty, trustworthiness, integrity or competency to transact the business of real estate; or any felony.

Other matters or changes that must be reported in writing to the Commission within 10 days can be found at K.A.R. 86-3-15. Supervising brokers also have 10-day reporting requirements for company changes and licensee terminations, which can be found at K.S.A. 58-3047.

19. Salespersons and associate brokers must deliver to the supervising broker within 10 days any documents that must be maintained in the supervising broker's transaction file.

K.S.A. 58-3062(b)(6) prohibits salespersons and associate brokers from retaining documents in their own personal working file that must be maintained in the supervising broker's transaction file. (The salesperson or associate broker may keep a copy of the transaction documents in a working file if permitted by the supervising broker.) The transaction documents must be turned over to the supervising broker to be maintained in the transaction file within 10 days of either the execution of the document or, if the document was not signed, the date of presentation of the document to the client or customer.
